

BEFORE THE
FEDERAL MARITIME COMMISSION



ORIGINAL

cc:OS
OGC
ALJ(s)
Pub

DOCKET NO. 14-14

FILED

NOV 19 2014

Federal Maritime Commission
Office of the Secretary

MARK BARR

v.

OCEAN TRADE LINES, INC.

BUREAU OF ENFORCEMENT
MOTION FOR LEAVE TO INTERVENE

Pursuant to Rule 68(C)(2)(ii) of the Commission's Rules of Practice and Procedure, 46 C.F.R. 502.68(C)(2)(ii), the Bureau of Enforcement (BOE) files this motion for leave to intervene in this proceeding. In support thereof, BOE states as follows:

By Verified Complaint filed November 13, 2014, Mark Barr (Barr or Complainant), a resident of the United Kingdom, alleges that Respondent Ocean Trade Lines, Inc. (OTL or Respondent), an ocean transportation intermediary (OTI) licensed by the Commission to operate as a non-vessel-operating common carrier (NVOCC), violated various provisions of the Shipping Act of 1984, viz., 46 U.S.C. §§ 40501, 41102(c), 41104(2), (3), and (4). The alleged violations stem from Complainant's aborted effort to employ OTL to transport a sailboat from Port Everglades, Florida to Southampton, UK. When it appeared that Respondent could not fulfill its undertaking, Complainant exercised its right to cancel the contract, obtain alternate transportation, and sought a partial refund from Respondent of the contract price previously paid.

Complainant alleges that Respondent's rates and its practices and requirements governing cancellation and refund procedures are not contained in a published tariff and are unjust, unreasonable, and discriminatory. Among other things, Complainant challenges Respondent's procedure which allows it 60 days to process a refund request and which also conditions a refund on Complainant signing a release form which (1) bars Complainant from disclosing or discussing any information about the shipping transaction without OTL's written consent, (2) bars Complainant from pursuing any other actions, claims, demands or damages against Respondent, and (3) compels Complainant to retract statements and reports to any agency. As of the date of the filing of the Complaint, Respondent has failed and refused to make any refund to Complainant. Consequently, Complainant requests an award of reparations, interest, attorneys' fees, a cease and desist order, and suspension or revocation of Respondent's license.

Discussion

The presiding officer or the Commission may permit BOE to intervene upon a showing that BOE's expertise is relevant to one or more issues involved in the proceeding and may assist in the consideration of those issues. 46 C.F.R. §502.68(c)(2)(ii). This proceeding involves alleged violations of the Shipping Act which, if proven, are serious, novel, and have potential widespread consequences. The complaint alleges that Respondent employs a refund process that is designed to withhold all or a substantial portion of the amount due to be refunded to Complainant for a service never performed under procedures that are not disclosed in a published tariff and which impose conditions that are unfair and unreasonable. If the facts alleged are proven, BOE would align itself with Complainant's position that Respondent has violated the Shipping Act by engaging in practices governing its cancellation and refund policies and procedures that are unfair or unjustly discriminatory, and that by employing the same has failed

to establish, observe and enforce just and reasonable regulations and practices, or to have engaged in unfair or unjustly discriminatory practices because the Complainant sought to raise his concerns with Commission staff in CADRS.

Upon information and belief, other shippers have likewise been subjected to the same or similar practices by Respondent. If Complainant's allegations are proven and are coupled with similar experiences of other boat shippers who employed Respondent, such a pattern of behavior reflects serious violations of the Shipping Act that should be addressed by BOE, and which warrant its participation in this proceeding. BOE's expertise will facilitate this proceeding. Its litigation experience with respect to Shipping Act violations and its institutional knowledge and background will benefit the ALJ's consideration of the case. Further, given that the requested relief includes the suspension or revocation of the Respondent's OTI license, BOE's interest and experience will assist not only in developing the factual record, but also in considering the gravity of the alleged violations and whether such violations warrant suspension or revocation.

Inasmuch as the Complainant is proceeding *pro se*,¹ BOE's participation will assist in ensuring that an adequate record is developed and that all implications of legal arguments will be thoroughly vetted for the presiding ALJ's consideration, even if not fully addressed by the Complainant. BOE does not contemplate addressing the request for reparations or the measure of damages, but intends to focus its participation on the lawfulness of Respondent's tariff practices, including its cancellation and refund procedures. In this respect, the Commission has recently issued a number of decisions addressing and more fully developing its views with respect to the prohibitions embodied in section 10(d)(1) of the Shipping Act governing an OTI's

¹ Although the complaint has been filed by counsel, the filing is accompanied by a Notice of Limited Appearance indicating that counsel's appearance is restricted to submitting documents and accepting service only.

failure to establish, observe and enforce just and reasonable regulations and practices. See, e.g., *Yakov Kobel v. Hapag-Lloyd A.G.*, 32 S.R.R.1720 (FMC 2013), *Century Metal Recycling Pvt. Ltd. v. Dacon Logistics LLC*, 33 S.R.R. 17 (FMC 2013), *Petra Pet, Inc. v. Panda Logistics Ltd.*, 33 S.R.R. 4 (FMC 2013), *Smart Garments v. Worldlink Logix Services, Inc.*, 33 S.R.R. 65 (FMC 2013), *Bimsha International v. Chief Cargo Services, Inc.*, 32 S.R.R. 1861 (2013), pet. for review denied October 2, 2014, by Summary Order in No. 13-4256, *Chief Cargo Services, Inc. v. Federal Maritime Commission*, (2nd Cir. 2014).

According to the complaint, Respondent's practices and section 10(d)(1) will be central to this case. Due to the Commission's evolving body of case law, resolution of this issue will likely have ramifications reaching beyond this particular dispute. As the Commission's enforcement component representing the public interest, it is BOE's intent is to assist in the development of the record with respect to Respondent's practices from a broader perspective than may be expected from the private litigants to the dispute.


BOE seeks to participate fully as a party to this proceeding to include discovery, examination of witnesses, presentation of evidence, and submission of briefs. BOE's participation and perspective, however, will not unduly delay this proceeding. Development of facts and issues in this proceeding will take place within the same discovery and briefing limitations as applicable without BOE's participation. Similarly, the parties' adjudicative rights will not be prejudiced by BOE's participation as a party.

In 2012, the Commission amended its Rules of Practice and Procedure to update and clarify the rules and also reduce the burden on parties to proceedings. Docket No. 11-05, *Rules of Practice and Procedure*, 77 FR 61519 (Oct. 10, 2012). The requirements for intervention were "modernized" and revised so as to afford BOE and other government agencies a designated

status for intervening in Commission proceeding with a specified standard for their intervention. *Id.*, 61522. Under the prior rule, the Commission tended to interpret intervention rules liberally. *Trans-Atlantic Agreement and Its Members – Independent Action*, 27 S.R.R. 16, 17 (ALJ 1995). BOE submits that the 2012 amendments to Rule 68 reflect an intent to further liberalize the standard for BOE's intervention. As noted in *Trans-Atlantic, supra*, the courts have urged administrative agencies to allow interventions liberally especially in cases that have widespread consequences. *Id.* If Complainant's allegations are proven, this proceeding may have wide reaching consequences.

For all of the foregoing reasons, BOE hereby requests leave to intervene as a party to this proceeding and to participate fully in all phases of this proceeding.

Respectfully submitted,



Peter J. King, Director
Cory R. Cinque, Trial Attorney

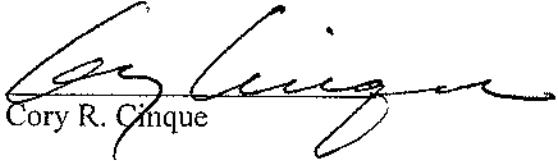
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November 19, 2014

Certificate of Service

I hereby certify that on this 19th day of November, 2014, the foregoing BOE Motion to Intervene has been served upon the Complainant Mark Barr and upon Respondent Ocean Trade Lines by first-class mail or by electronic mail.

Signed in Washington D.C. on November 19, 2014


Cory R. Cinque